

UNPUBLISHED

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

GERALD FRANK CENTRA,

Plaintiff,

vs.

JO ANNE B. BARNHART,
COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No. C02-4072-MWB

**AMENDED REPORT AND
RECOMMENDATION¹**

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¹The only amendments from the original Report and Recommendation are a correction in former footnote 12 (now footnote 13) relating to Global Assessments of Functioning, and clarification that the functional capacity assessments performed by Drs. McDonough and Tedesco were Mental Residual Functional Capacity Assessments.

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I. INTRODUCTION

The plaintiff Gerald Frank Centra (“Centra”) appeals the decision by an administrative law judge (“ALJ”) denying his application for Title XVI supplemental security income (“SSI”) and Title II disability insurance (“DI”) benefits. Centra argues the Record does not contain substantial evidence to support the Commissioner’s decision. (See Doc. No. 23)

II. PROCEDURAL AND FACTUAL BACKGROUND

A. Procedural Background

On November 30, 1998, Centra filed applications for SSI and DI benefits, alleging a disability onset date of July 15, 1997.² (R. 140-42) The applications were denied initially on March 3, 1999 (R. 109-10, 113-16), and on reconsideration on May 28, 1999. (R. 111-12, 119-22) Centra requested a hearing (R. 123-24), which was held before ALJ Jan E. Dutton in Sioux City, Iowa, on November 30, 1999. (R. 38-108) Attorney Dennis Mahr represented Centra at the hearing. Centra testified at the hearing, as did Vocational Expert (“VE”) Dr. William B. Tucker.

On March 27, 2000, the ALJ ruled Centra was not entitled to benefits. (R. 16-29) The Appeals Council of the Social Security Administration denied Centra’s request for review on June 17, 2002 (R. 7-9); however, the denial crossed in the mail with additional medical records submitted by Centra’s attorney. The Appeals Council reviewed the

²On March 20, 1997, Centra filed applications for SSI and DI benefits, alleging a disability onset date of October 9, 1995. (See Doc. No. 1, Ex. A) Those applications were denied on June 16, 1997. (*Id.*, Ex. B) Centra apparently did not request reconsideration of those applications. (See R. 40-41)

additional records and, on March 26, 2003, reaffirmed its denial of Centra's request for review, making the ALJ's decision the final decision of the Commissioner. (R. 1035-37)

Centra filed a timely Complaint in this court on August 19, 2002,³ seeking judicial review of the ALJ's ruling. (Doc. No. 1) In accordance with Administrative Order #1447, dated September 20, 1999, this matter was referred to the undersigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B), for the filing of a report and recommended disposition of Centra's claim. Centra filed a brief supporting his claim on November 3, 2003. (Doc. No. 23)⁴ The Commissioner filed a responsive brief on December 15, 2003. (Doc. No. 27) Centra filed a reply brief on December 29, 2003. (Doc. No. 29) The matter is now fully submitted, and pursuant to 42 U.S.C. § 405(g), the court turns to a review of Centra's claim for benefits.

B. Factual Background

1. Centra's Testimony

³Centra's Complaint was filed timely after the Appeals Council first denied his request for review. At that time, it was not clear whether the Appeals Council would reconsider its position based on the additional medical records that had crossed in the mail with the Appeals Council's decision. The Commissioner initially moved to strike the sections of Centra's Complaint that referred to the additional records, and in response, Centra moved for remand to consider the new records. The Appeals Council subsequently located and reviewed the additional records, rendering moot the motion to strike and the motion for remand. (*See* Doc. Nos. 7, 15, 17, 19, 20 & 22)

⁴Centra filed a forty-three page brief without seeking leave of court to file an over-length brief. Local Rule 7.1(h) provides that briefs are limited to twenty pages, in the absence of a motion for leave to file a longer brief. The court assumes Centra's failure to seek the court's leave to file his over-length brief was merely an oversight and will allow the brief to be considered. However, Centra's counsel is directed to comply fully with the Local Rules in connection with all further filings.

At the time of the hearing, Centra was 50 years old, and living in Sioux City, Iowa, where he rented a room from a woman with three children.⁵ (R. 46, 52-53) He was divorced in May 1995, and he has three children, ages 21, 18 and 11, who do not live with him. He pays child support from his VA benefits. (R. 52) He cleans his own room, but does no other housekeeping duties. He does not cook or do any grocery shopping. (R. 53) He drives a car. (R. 54)

Centra finished the eleventh grade in high school, noting he did not graduate because he “had a girlfriend and fell in love.” (R. 46) He considers himself to be of average intelligence, and he can read and write. (R. 47) After high school, he completed a one-year training program at Western Iowa Tech to become a machinist; however, he has never worked as a machinist. (R. 47-48)

Centra has worked primarily as a butcher and a construction worker. The longest he has held a job was “[t]hirteen seasons, twelve years,” for Steve Harris Construction in Omaha, Nebraska. (R. 48) In that job, Centra worked paving roads during nice weather, and would draw unemployment benefits during the winter months. (R. 48-49) He quit the job in mid July 1997, because he had “just got out of the hospital for kidney failure, and . . . just couldn’t work anymore.” (R. 49) He worked up to the time he was hospitalized, and then spent seven days in the hospital, two of them in intensive care. Upon his release, his doctors did not restrict him from working; however, Centra stated he felt unable to continue working in the heat. He tried returning to work for about a week-and-a-half, and then he quit, explaining he was unable to “[b]end over, pound the pins in, and lift the forms,” and the job was just too physical. (R. 49-50, 66)

⁵ Apparently, Centra has some type of relationship with his landlord. She believes she is his girlfriend and they will be married someday, while Centra does not think of her as a girlfriend and says he “never would get married again.” (R. 54-55)

After he quit working, Centra filed for a non-service connected pension through the Veterans Administration, and his application was granted in October 1997. (R. 50) According to Centra, the VA found him to be permanently disabled based 50% on his “nerves,” 20% on his thyroid problems, 10% on prostate problems, and 10% on bursitis or arthritis. They also considered his age. (R. 51) Centra’s VA pension is his only source of income. (*Id.*)

Centra’s daily activities include cleaning, walking several blocks a day, taking care of his eleven-year-old child on weekends, and occasionally hunting for mushrooms with friends. (R. 55) He explained that the mushrooms grow in sand and “stick up out of the ground,” so the activity does not require him to do any digging. (R. 55-57) Centra stated he gets out at least once a day to visit friends. (R. 57) He spends a lot of time cleaning because he hates to have anything out of order. (R. 91)

Centra knows how to cook and occasionally prepares meals. He frequently drives to the home of a friend named “Arnie,” who lives less than a mile away, to eat meals. Sometimes Sonja, his landlord, will make him a meal. (R. 57) Centra described his daily routine as follows:

I get up about 10:00 or 11:00. I have sleep apnea and my machine, I ripped the mask off of it and I don’t get a good night sleep. And so that’s why I get up at that time. I’m really tired. And then I take a bath. And then I go over to Arnie’s. And then I come back home and I take a nap again, until about 6:00.

(*Id.*) During the time he is at Arnie’s, they will sit around and argue about politics and religion. Arnie usually takes him out for dinner at the Come-N-Go, where they will have a cup of coffee and a sandwich. (R. 57-58)

Centra stated he naps for about three hours. After his nap, he takes his pills, and then will “lay around in my bedroom.” (R. 59) He stated, “I like to be alone a lot.” (*Id.*)

He stated Sonja's children are "not partial" to him and leave him alone. (*Id.*) He does not interact with Sonja and the children in the evening, staying alone in his room. He does not watch much television; the only show he enjoys is X-Files. (*Id.*)

Sometimes he goes to the park and sits alone, or Arnie picks him up and they drive around. Centra explained that he met Arnie when they were both patients in a VA mental ward. He stated Arnie is a veteran who is disabled from post-traumatic stress disorder. (R. 60) Centra stated he has not been hospitalized since his kidney failure in 1997, although doctors have wanted him to be hospitalized "because they think I'm suicidal." (R. 60-61) He does not believe he could find a job because he would miss too much time due to doctors' visits. He stated, "I go to a VA on the average of 30 times per year or more." (R. 61) However, Centra admitted he had the same number of doctors' appointments before he quit working.

Centra noted, "I put on 80 pounds because of my thyroid and I don't think anybody's going to hire me at my age of 50, and my medical background." (*Id.*) He explained he loses weight and then gains it back again. At the time of the hearing, he was up to 263 pounds. (R. 62) He noted, "Every one of the reports says I'm obese, I guess. They say I'm obese." (R. 63) Centra stated he is unable to get much exercise. He explained he does physical therapy consisting of sit-ups, but he pulled a tendon in his back and, at the time of the hearing, stated he was unable to "move much of anything." (*Id.*)

Centra testified that although he would lose his VA pension if he went back to work, he would rather be working and loves working. He stated receives \$708 per month from the VA. He had been receiving \$958 per month, but his payments were reduced because he had received a payment of \$3,000 from suing his landlord after falling off a porch. He explained that when the \$3,000 had been offset, his payment would go back up to \$958 per month. He pays \$150 per month in child support. (R. 63-65) According to Centra, the

VA reduces his pension dollar-for-dollar based on any income he receives, so if he worked part-time, for example, his pension would be reduced in the amount of his income from the job. (R. 65)

Centra stated he gets free medical care and hospitalization from the VA. He does not get free eye care or dental services; however, he stated the VA was going to give him eyeglasses because he had a bacterial infection in his eye. (*Id.*)

The ALJ asked Centra if he felt he could work at some type of job requiring less physical exertion than the road construction work. Centra replied, “I don’t have the training. I don’t like the computer. I think it’s of the devil. I won’t get on a computer or cell phones and stuff like that.” (R. 66) He stated computers, cell phones, and bar codes are “the mark of the be[a]st,” an idea he claimed to get from Revelations. (R. 79-80) His attorney asked how he feels about having to buy products with bar codes on them and Centra responded, “I don’t like it. But I’ll never get on a computer.” (R. 80)

He stated he had never tried something like being a security guard and did not know if he could do that type of work, explaining, “It all depends if they take my application and allow me to go to my VA appointments. I have two next month, two in January. I had four this month, of November. So I frequently go to the VA. It all depends if the company let’s [sic] me have the time off.” (R. 66-67) Centra stated he was able to get time off from his construction job because the company was owned by his ex-brother-in-law, Steve Harris. (R. 67) According to Centra, if he fails to make his VA appointments as scheduled, “they can drop me.” (*Id.*)

Centra testified about his various medical problems, beginning with bursitis in his left knee. He stated he had had his “knee drained” and had two more doctor’s appointments scheduled for follow-ups. (R. 68)

He also complained of arthritis in his shoulder, and stated he has lost 50% of the use of his shoulder. Centra stated his ability to lift things with his left arm is limited. He has a problem raising his arm over his head. He stated he began having problems with his shoulder two to two-and-a-half years before the hearing, and he does not know what started the problems. He takes aspirin, Tylenol, and Darvocet for his shoulder pain. (R. 68-69, 81)

Centra stated he has chest pain almost every day, and he takes Atenolol for the chest pain. He believes anxiety and panic attacks cause the chest pain. (R. 69-70) He began seeing a VA psychiatrist in 1997, and he takes Clonazepam, which helps keep him from hearing voices. He stated he hears his “name being called and demons saying [his] name.” (R. 71) According to Centra, he began hearing voices in 1984 or 1985. He stated he was hospitalized for treatment due to paranoid schizophrenia in 1985, at Marian Health Center, where he remained for three weeks, and he has continued treatment at the VA since that time. (*Id.*) He explained that sometimes he will not hear voices for a month, and then he will hear them two or three times, and then they will be gone again for a month or so. He stated the last time he heard voices was about a month prior to the hearing, when he was at the high school “[j]ust sitting around,” watching people do construction work. He explained, “I heard the voice say, Gerry, Gerry, and I turned around and there was nobody there.” (R. 86)

Centra also receives treatment for high blood pressure, which has given him problems since at least 1995. He stated he thought he had high blood pressure as far back as 1985, and he received medication but threw it away when his blood pressure went back down. (R. 72) Centra believes his high blood pressure contributes to his anxiety attacks, and he stated he has a fear of death. He described an incident in about 1995, when his blood pressure reached 218/125, and he thought he was dying. He stated he did not want

to go out at night because he thought he was dying, and he got confused and lost. He stated, "I was found outside walking in my underwear." (*Id.*) He went to the emergency room, was hospitalized for one night, and was released the next day after taking a stress test. (R. 73) He was seen at Marian Health Center seventeen times from October 1995 through October 1997, with complaints of high blood pressure. (*Id.*)

Centra finally got his blood pressure under control in about May 1999, after his medication had been changed three times. He takes Felodipine and Prazosin HCL. He stated he has side effects from the medication that include diarrhea and stomach problems, and his "face feels like it's hot all the time from [his] high cholesterol pills." (R. 74) Centra stated he has diarrhea every day, and he reported having "accidents" twelve or thirteen times in the two years preceding the hearing. He also experiences stomach problems daily, including nausea and heartburn. He takes Pepcid and antacid tablets, which he stated work some of the time. (R. 75)

Centra stated his fear of death is due to the fact that his father passed away at an early age from "a massive coronary." (*Id.*) According to Centra, the last thing his father said before he died was Centra's Social Security number, which leads Centra to believe he is going to die early -- "that he'd say I'd be next." (R. 76) Centra stated he has two sisters who both suffer from anxiety and panic attacks, and both have been diagnosed as schizophrenic. (R. 75) He said Dr. Rhodes at the VA asked him on September 28, 1999, if he wanted to be hospitalized because he was suicidal, but Centra declined. (R. 76-77) He stated that other than thinking about his father's death, his panic attacks are brought on by thinking about being in a casket all by himself. (R. 77) Centra stated he gets panic attacks three or four times a week. He described the panic attacks as follows: "I get real quiet. My stomach gets -- I'm nause[ous] in my stomach. My heart starts racing. I start sweating. My left arm goes numb, pain in my chest, and I walk a lot. I won't talk. And

I try to go to sleep, try to sleep it off.” (R. 87-88) He stated he was having panic attacks back when he was working, but at the time, he did not know they were panic attacks. (R. 88)

Centra testified he does not like to be in crowds, and he has not been to the mall since 1997, when he went with his daughter. Being in crowds makes him “nervous, sweaty, and [his] heart starts racing.” (R. 78) He explained he does not like to be around other people and he just wants to leave. He only goes to the grocery store late at night so he can avoid people. (R. 80) Centra stated he does not attend movies or sporting events and does not subscribe to any magazines. Although he can read, he has no interest in reading. (R. 79) He has no friends other than Arnie. (R. 89)

Centra opined he can walk five or six blocks before he runs out of breath. (R. 81) He can lift 50 to 60 pounds on a regular basis, although he does not believe he could “do that all day long.” (R. 82) His strength is in his right arm; he can lift very little with his left arm. He stated “mostly everything is bad on my left side, my eye, my knee, my shoulder.” (*Id.*) He stated he can drive a car for thirty miles without stopping, but he gets very tired and tends to fall asleep at the wheel. (R. 83) He does not like hot weather, which brings on asthma and breathing problems, and he is afraid of heights. (R. 90) He stated his memory is poor and he is distracted easily. He does not believe he could be around other people and maintain his concentration without being distracted. (*Id.*)

Centra stated he was “in the process” of having a heart attack when he was taking a treadmill test at the VA in 1997. He was unable to finish the test because his blood pressure went up to 258/58.⁶ (R. 82-83)

⁶The Record indicates that during a stress test in March 1997, Centra’s blood pressure reached a high of 239/63. (R. 452, 454)

Centra testified he was depressed at the time of the hearing because he did not like being there. He stated the only thing he is interested in doing on a daily basis is smoking. He had been smoking three packs a day, but cut back to a pack-and-a-half, which is not as much as his doctors have recommended. He stated he cut back “because I found out I had an enlarged heart. I got kind of anxious and had a few – well, I had panic attacks and started smoking a lot more.” (R. 84)

According to Centra, his energy level is “[s]low, sluggish all the time.” (*Id.*) He has a nervous habit of shaking his foot but he does not know why. He has feelings of guilt and worthlessness related to the breakup of his marriage and loss of his children, his health problems, “not working,” and “not being able to be a so called part of society.” (*Id.*) He stated he has suicidal thoughts two or three times a day. He thinks about not taking his medication, and stated he is supposed to take around 40 pills a day. He sometimes forgets to take his pills on schedule, and several times a week he will skip his morning pills intentionally because he does not want to take them. (R. 84-85) He has a poor appetite and sometimes does not eat all day, either because he forgets to eat or because he is having stomach problems. He attributes his weight gain to thyroid problems. (R. 85)

Centra stated he does not sleep well due to sleep apnea that causes him to “stop breathing every three minutes.” (*Id.*) He stated he ripped off his CPAP mask and “get[s] a restless sleep,” so he has to “unconsciously wake [him]self up.” (*Id.*)

Centra testified he does not get along well with the woman he lives with. He does not like her, but continues to live with her because he has nobody else to live with. He stays in his room for about thirteen hours out of twenty-four. He is afraid of death and dying, crowds, and all types of animals, including dogs, cats, and birds. (R. 87)

Centra does not believe he could follow any kind of regular schedule or routine. When asked why, he replied, “I don’t know. I just don’t do stuff on a regular basis. I just do it as it comes.” (R. 89)

2. *Centra’s medical history*

Centra submitted nearly 1,000 pages of medical records in support of his application. The court has reviewed all of the records in detail. Centra claims he is disabled due to a combination of physical and mental problems, including “hypertension, panic attacks, depression, sleep apnea, and problems with his heart, prostate, and thyroid.” (R. 19) The Record does not support Centra’s claim of disability due to thyroid, heart, or prostate problems, or sleep apnea. Although Centra has been treated for those conditions, none of them, standing alone or in combination, has been disabling.

The Record indicates Centra had a great deal of difficulty getting his blood pressure under control, particularly from 1995 to 1997, but once the correct combination of medications was achieved, his hypertension was stabilized. He first expressed concern about elevated blood pressure in February 1989, when he was seen at the VA Medical Center for bronchitis, but the Record does not indicate he began treatment for hypertension at that time. (R. 915-17) On October 9-10, 1995, when Centra was hospitalized due to left arm pain and light-headedness, his discharge diagnosis includes borderline/intermittent hypertension. (R. 641-43; *see* R. R. 644-50, 848-88) The medical history completed upon Centra’s admission through the Emergency Room notes he had “a history of hypertension, but he quit taking his pills six years ago,” and he had not had his blood pressure or cholesterol checked. (R. 646) He was not placed on medication at that time, but was advised to lose weight, quit smoking, and monitor his blood pressure. (R. 648)

Centra saw S.E. Vlach, M.D. on October 14, 1995, regarding his blood pressure. (R. 635-38, 845-47) Centra reported that he had stopped smoking two days before the exam and he wanted to quit permanently. He had a negative CT scan. His blood pressure was 180/120. Dr. Vlach diagnosed Centra with “[i]ntermittent headache and dizziness felt to be secondary to uncontrolled high blood pressure.” He prescribed Cardura and one baby aspirin daily. (R. 636) After suffering significant side effects from Cardura, Centra was switched to Dilacor on October 30, 1995. (R. 261, 738) Centra’s blood pressure was monitored regularly over the next four to five months. He had started smoking again at some point and then stopped again for a period of time.⁷ He was having frequent headaches, which doctors noted could be due to visual symptoms or his uncontrolled blood pressure. (R. 252-57) On February 7, 1996, a doctor prescribed Hytrin, with the hope of weaning Centra off the Dilacor. (R. 238, 736) The Hytrin helped somewhat but did not completely alleviate Centra’s symptoms. It appears that sometime between February and May 1996, a doctor also prescribed Prazosin. (See R. 314 on 05/03/96, noting Centra was to continue Prazosin) Centra apparently continued taking Hytrin, Dilacor, and Prazosin until the following December, when the Dilacor was discontinued. (R. 265)

Doctors’ notes indicate Centra was started on Atenolol on March 18, 1997. On March 24, 1997, Centra called his doctor to express concern that his blood pressure was up to 170/100. (R. 449) He saw the doctor on March 27, 1997, and stated his blood pressure had been up since his medication was changed. (R. 448) He continued to

⁷On December 7, 1995, the Record indicates, “He just quit smoking yesterday.” (R. 630) Doctors’ notes indicate he still was not smoking on December 22, 1995 (R. 239); February 5, 1996 (R. 350); February 17, 1996 (R. 334); and May 3, 1996 (R. 314). He apparently started smoking again sometime between May 3, 1996, and October 28, 1996, when doctors again began advising him to stop smoking. (R. 270) There is no further indication Centra quit smoking for any period of time. Doctors continued to advise him to stop smoking, and he cut back a few times, but indicated he did not want to quit smoking. (See R. 552, 677)

complain that his blood pressure was high for the next few weeks (*see* R. 442-43), but doctors saw no indication that his medications needed to be changed. (*See* R. 430, 614-15, 817-19) Centra reported to a social worker on April 14, 1997, that he was unable to get his hypertension under control. (R. 437)

Centra's hypertension was stabilized for a couple of months, and then on September 27, 1997, he reported his blood pressure had increased the previous evening, to 175/103. (R. 401-03) A doctor's note on October 6, 1997, indicates Centra had poorly controlled hypertension, and the doctor questioned whether Centra was taking his Atenolol. (R. 391) At a follow-up visit on November 4, 1997, the record indicates his blood pressure continued to be elevated. The doctor decreased the dosage of Atenolol. (R. 385-86) Atenolol and Prazosin both were increased at Centra's next appointment, on November 10, 1997. (R. 381-84) This change appears to have stabilized his hypertension. He has been seen for medication checks and follow-up about every six months since late 1997, with no further acute episodes.⁸ The Record indicates he continued taking Prazosin through at least January 2001 (*see* R. 1040), and Hytrin through at least April 2002 (*see* R. 1055-56). At the time of the hearing, Centra stated he was taking Felodipine and Prazosin HCL. The Record does not indicate when Felodipine first was prescribed, but the drug is listed as one of Centra's current medications in a note dated April 11, 2002. (R. 1053)

The above evidence indicates Centra is not disabled due to hypertension. Although he had some difficulty finding a combination of medications that worked for him and did not cause excessive side effects, the evidence does not indicate these difficulties were disabling as defined by the Social Security Act. This conclusion is support by the opinion

⁸As noted above, Centra testified his blood pressure finally stabilized in about May 1999, after his medication was changed three times. (R. 74)

of consulting examiner Dr. Douglas W. Martin, who performed a comprehensive examination of Centra for DDS on January 12, 1999. Dr. Martin found Centra should be keep out of dusty environments and fumes due to his asthma, but otherwise he had no physical functional limitations. The doctor opined the majority of Centra's concerns and symptoms "are probably due to psychiatric difficulties." (R. 570-74)

Other consulting examiners also found Centra to have little or no physical functional limitations. On February 24, 1999, Dennis A. Weis, M.D. noted Centra's physical exam was "largely unremarkable except for mild wheezing," and he opined most of Centra's concerns were "due to his psychiatric problems." (R. 659; *see* R. 651-58) Similarly, on May 21, 1999, Richard H. Hornberger, M.D. found Centra's exertional activities were not influenced by his medical difficulties. (R. 704-05)

The Record indicates Centra's mental problems have caused him the most difficulty. Indeed, the ALJ noted that at the hearing, Centra's attorney stated Centra's mental impairment "was the primary basis for the claim of disability." (R. 22) Therefore, the court will focus on Centra's mental problems in some detail.

The first record evidence of Centra's treatment for mental problems is a "scheduled admission" to a psychiatric unit on January 12, 1977. Centra complained of depression and anxiety over his inability to find appropriate housing for himself and his children. (R. 396, 721) He was discharged at his request to the psychiatric clinic, but missed his appointment because he had been admitted to the medical ward for bronchitis.

There are no further records of his mental health treatment until eight years later, when he was admitted to the Veteran's Administration Medical Center (the "VA") on January 10, 1985, for an adjustment disorder and schizoid personality disorder. (R. 396, 723-25) He reported that he and his wife were divorcing and she had obtained a restraining order against him, causing him to become depressed and suicidal. (R. 724)

According to Centra, he had held several jobs since his military discharge⁹, and he moved to Sioux Falls in 1977, when he and his wife were deemed unfit parents and their five children were removed by the court. He and his wife had had two more children since then. At the time of this admission, Centra was working for the Highway Department. Centra's mental status examination was "positive for depressive symptomatology including sad mood and a moderately blunted affect." (*Id.*) He reported periodic auditory hallucinations, and showed "evidence of bad judgment in the past and . . . little insight into why he really feels depressed other than his [marital] discord." (*Id.*) He also reported having violent outbursts of anger with memory blackouts of the incidents. (*Id.*)

Centra was "deemed employable," and was released in stable condition. (R. 725) After some follow-up testing, his diagnosis was "adjustment disorder; passive aggressive traits; antisocial traits." (R. 396)

Centra was seen at Marian Health Center in Sioux City, Iowa, on July 8, 1985, complaining that he was having difficulty controlling his temper. (R. 898) He reported that he was discharged from the VA in April 1985, with a diagnosis of paranoid schizophrenia. He stated he had thrown away his medication upon leaving the hospital. He was referred to Siouxland Mental Health for further treatment. (*Id.*)

The next evidence of Record indicates Centra was brought by police to the Marian Health Center on May 24, 1990. His wife was concerned about Centra harming himself and had called the police, and Centra went with them voluntarily. Centra asking to see a therapist for depression. However, before he saw anyone, Centra left the hospital. (R. 894-95)

⁹Records indicate Centra entered active military service on June 14, 1972, and was discharged on December 11, 1972. (*See, e.g.*, R. 955) Centra indicated he was discharged "because of emotional problems with his wife, and the presence of children at home." (R. 724)

It appears Centra was not seen again for mental health complaints until February 5, 1996, when he was referred to the VA for counseling. Centra reported his doctors felt his problems were “all in [his] head.” (R. 350) He acknowledged that “stress may be playing a significant component in his physical well-being.” (*Id.*) Centra expressed concern over the possibility of developing early heart disease based on his father’s history. He scheduled a counseling appointment to work on stress management techniques. (*Id.*)

Centra was seen at the VA on February 27, 1996, with complaints of daily panic attacks, shortness of breath, chest pain, sweating, “thoughts of dying,” and dizziness. (R. 330-36) He stated he had been experiencing panic attacks since October 1995, when he was contacted by one of his children who had been taken away from him in 1977. He reported daily panic attacks lasting from one hour to five days, and including symptoms of rapid pulse, rubbery knees, jittery hands, shortness of breath, chest pain, dizziness, fear of dying, and depersonalization. Other symptoms, which had improved, included fear of choking, nausea, and fear of the dark. Progress notes indicate Centra was on unemployment from a highway construction job, and he feared he would be unable to return to work. The doctor noted Centra seemed motivated to work and enjoyed his job. (R. 335) He was diagnosed with panic disorder and agoraphobia. His current GAF was assessed at 45¹⁰, with an estimated average of 85 over the preceding year. His dosage of Klonopin was increased, and Centra was cautioned about using alcohol. (R. 330)

Centra was seen for follow-up of his anxiety and stress on March 6 and 26, 1996 (R. 326-29, 321-23), and May 3, 1996 (R. 314-20, 397). At the May 3rd appointment, he reported “Klonopin helps 100%.” (R. 316) He was working 55 hours per week doing

¹⁰ A GAF of 45 indicates serious symptoms or serious impairment with social and occupational functioning. American Psychiatric Assoc., Diagnostic and Statistical Manual of Mental Disorders (4th ed. 1994) (“DSM-IV”), at 32.

road construction. (*Id.*) Centra was seen again on July 15, 1996, and reported he was having weekly headaches and he was quite tired, but his anxiety was better. He stated he was working construction for twelve or more hours a day, five days a week. (R. 292)

On December 6, 1996, Centra was seen at the VA, and reported increased anxiety and more frequent panic attacks. His Klonopin dosage was increased, and he was started on Zoloft. (R. 267) At a follow-up appointment on February 3, 1997, he reported the panic attacks were better since the change in medications. He stated most of his panic attacks occurred in public places. His Zoloft dosage was increased, and the Klonopin was decreased. (R. 505) He saw a counselor the same day and stated his mood was up and down, and he liked to run and “hide in his room to avoid conflict.” (R. 507) He agreed to “practice refraining from hurting [him]self and others and employ new strategies.” (*Id.*)

Centra underwent a Mental Disorders Exam at the VA on February 11, 1997. (R. 955-61)¹¹ He reported having panic attacks, anxiety, and dizziness since about October of 1995, but stated these symptoms had improved since he started taking Klonopin in February 1996. He noted his panic attacks usually occurred when he was excited or in a crowd, but they sometimes happened at home, especially when his girlfriend’s ten-year-old son started screaming and yelling. (R. 955) He reported some homicidal ideations, “particularly wanting to hurt the ten-year-old son of his girlfriend,” but he denied having any serious intent or plan and stated he had never hurt the child. (R. 959) Centra also described intermittent depressive episodes for about a year-and-a-half, lasting from a few days to one or two weeks at a time. He complained of increased memory problems. (R. 956)

¹¹At the examination, Centra was scheduled for a neurology consult (*see* R. 960), which did not take place until June 18, 1997. The report from the neurology consult appears at R. 960-61 and R. 425-28, and is summarized in chronological sequence in this opinion.

Centra stated his work was seasonal, and he would get laid off every November, and live on unemployment until the job resumed in April of the following year. During his periods of layoff, his typical day would consist of the following:

A typical day for the patient is getting up at about 5:00 or 5:30 A.M. He drinks his coffee and smokes a cigarette while sitting on the edge of his bed. He wakes up the kids at about 6:30 and sends them off to school. He goes back to bed and watches some television or goes outside and takes walks for about six or seven blocks. He comes back home, lays back in bed, and watches some more television until he is hungry about 2:00 P.M. and eats lunch. Then he takes a nap until about 6:00 P.M. and on waking up watches more television and finally goes to bed again at about 9:00 P.M.

(R. 958)

The doctor noted Centra was attentive, cooperative, and pleasant during the exam. He maintained good eye contact and responded appropriately to questions. His memory appeared to be intact, and the doctor noted Centra's "[i]mmediate recall was three out of three and after five minutes was two out of three. He did recall the past Presidents fairly well and was able to provide some significant news items. His attention and concentration were both good." (R. 958-59) The doctor concluded Centra's intelligence was "average to below average," and his insight and judgment were intact. (R. 959) He diagnosed Centra with panic disorder with agoraphobia, and depression not otherwise specified, and noted Centra was subject to moderate stressors based on his seasonal job, "chronic family discord, inability to tolerate crowds, [and] inadequate finances." (*Id.*) The doctor assessed Centra's current GAF at 60 to 65.¹²

¹²A GAF of 60-65 indicates mild symptoms or some difficulty with social and occupational functioning. DSM-IV at 32.

Centra returned to the VA on March 1, 1997, complaining of an increase in the frequency of his panic attacks, and daytime drowsiness. He stated his recent panic attacks could be due to increased stress regarding his work status. The doctor prescribed Ativan, and continued the Zoloft and Klonopin. (R. 499) On April 4, 1997, Centra called the VA to ask if his panic attacks and anxiety could be exacerbated by his boss's inappropriate comments about Centra's anxiety. Centra was told to contact an employee representative for assistance. (R. 445) At an April 14, 1997, appointment, Centra reported continuing problems with his boss. He stated he was unable to tell the difference between his panic attacks and hypertension or thyroid problems, and he complained about difficulties resolving his hypertension. (R. 437, 439)

Centra underwent a neurology examination on June 18, 1997, by K. Gene Koob, M.D. Centra described his history of mental and physical problems, and the doctor reviewed an earlier MRI, CT scan, and EEG, all of which were negative. Dr. Koob noted, "I do not find evidence of neurologic disability here. One would consider the possibility that these episodes are in fact a form of complex partial seizure." (R. 426, 961) He ordered a repeat EEG, which also was normal, and concluded no further neurological treatment was indicated. (R. 427, 961)

On July 18, 1997, the Department of Veteran's Affairs issued a Rating Decision on a disability claim Centra had filed on December 23, 1996. The VA concluded Centra was "unable to secure and follow a substantially gainful occupation due to disability." (R. 995) The report notes Centra had diagnoses of panic disorder with agoraphobia; hypertension and hypothyroidism, both controlled by medication; bronchial asthma, asymptomatic; benign prostatic hypertrophy with secondary nocturia and occasional dribbling despite treatment with medication; intermittent tension headaches; inflammation of the xiphoid process with past history of costochondritis; and chronic bursitis of the left shoulder joint

with degenerative arthritis. (*Id.*) Centra was found to be disabled on the basis of panic disorder with agoraphobia (50%), benign prostatic hypertrophy (20%), degenerative arthritis of the left shoulder with bursitis (10%), hypertension (10%), and hypothyroidism (10%). (R. 996)

The Record indicates Centra's dosage of Klonopin was increased on July 18, 1997. (R. 397) He had a psychiatric case management evaluation by phone on August 15, 1997. He told the social worker he had recently stopped working because of his physical problems and panic attacks, and due to problems with his boss that caused some of his panic attacks. The social worker discussed a partial hospital program with Centra as a way he could learn skills to deal with his anxiety and panic attacks. (R. 412)

At his next doctor's appointment on August 22, 1997, Centra complained of panic attacks three times a week and increased depression. He reported feeling nervous all the time, and sleeping only four to five hours a night, awakening in the early morning. He stated he was unable to work due to his anxiety and medical conditions. The doctor diagnosed Centra with panic with agoraphobia, and depression not otherwise specified. He increased Centra's Klonopin dosage further. (R. 411) On September 24, 1997, Centra's Zoloft dosage was increased. (R. 394)

Centra was seen for a mental health evaluation by VA psychiatrist Samuel Gelernter on September 29, 1997. Centra reported, "Things are not too bad lately," noting decreased stress and anxiety since his Klonopin dosage was increased. (R. 397) He complained of continued depression, however, citing some family problems. Centra told the doctor he had quit work in July 1997, because of the way his boss treated him. According to Centra, his boss repeatedly said, "Why don't you just die already?" (R. 398) Centra reported having no outside activities, but indicated he was helping a friend tear down a building. The doctor noted Centra arrived "in work clothing and had the smell of

him as if he had just worked on construction.” (R. 399) The doctor observed that Centra’s “lethargic appearance during the interview does not suggest a person that can the same day help his friend tear down a house.” (*Id.*) The doctor noted Centra had a past history of gambling, and he presented “a confusing history” that contradicted information he had given doctors previously. For example, Centra “reported that he had [a myocardial infarction] while taking a stress test; however, the records [do] not substantiate this. This is very similar to his statement in 1977 where he reported that his heart had stopped twice requiring electroshock treatment.” (R. 399) Dr. Gelernter opined Centra might suffer from a personality disorder. He increased Centra’s Zoloft dosage, and directed him to return in three weeks to continue the assessment. (R. 399-400)

Centra apparently did not return for further evaluation until December 15, 1997, when he was seen for follow-up of his panic attacks and anxiety. He reported a decrease in the panic attacks, and indicated he was spending a lot of time alone in his bedroom. He stated he was sleeping more, yet he felt more tired. He described a practice of compulsive cleaning, stating he cleaned for three to four hours every day. Among other things, Centra reported he was having homicidal thoughts. Dr. Gelernter noted the following:

[Centra] reports that he sometimes has some thoughts of killing people. “How it would feel to kill somebody. I have pictures in my mind watching him suffer and die – nobody in particular. I would torture them – cut fingers off – stab them, but take my time at it. This is normal to me – it comes and goes. I’m not afraid of killing anyone.” When asked if he had ever killed anyone, he reported that he had been arrested for shooting at four carloads of people. He reports that his brother is schizophrenic. “We were going to kill an Indian – just to kill him.” He reports that he did shoot at someone and then he and his brother were chased by [a] vehicle. After awhile he reports that he got tired of being chased, stopped the car, and got out of it and drew his 38 pistol and fired at the

purs[u]ing car, who then sped back. He reports that this happened in 1975 in Sioux City, and he spent one day in jail.

(R. 975)

Centra stated he wanted to recover from his depression, feel good about himself, and stop being “such a cleaning fanatic.” (*Id.*) The doctor noted Centra appeared “somewhat more relaxed” than he had been, but his thinking was “a bit odd.” (R. 376) The doctor concluded as follows:

This is a large muscular man who presents himself in a very pleasant manner who has these odd thoughts and also has obsessive-compulsive disorder. He evidently likes to be by himself and evidently cannot get over his wife leaving him. At this time, it is not clear if his odd thoughts are part of something like schizotypal personality disorder or if they are an entity by themselves.

(*Id.*) The doctor added Risperdal to Centra’s medications, and directed him to return in two weeks for continued evaluation. (*Id.*)

Centra missed his next appointment due to a medical problem. He saw Dr. Gelernter again on February 17, 1998, and reported having an anxiety attack the previous week that lasted an entire day. He stated he had joined a health spa, where he rode a bike and walked up stairs. Centra reported that he had stopped taking the Risperdal after two weeks because he “felt weird” and it “slowed his memory,” preventing him from playing math games with his daughter. (R. 559) He stated he enjoyed “mental arithmetic,” and also liked “to count names such as Dave and John while watching the TV credits.” (*Id.*) Centra indicated he was feeling better about himself, doing more activities and getting out, but he still stayed in his bedroom a lot. The doctor noted Centra “reports that he used to hurt his two cats, but not anymore. They would stare at him and he would get angry. Then he would get the thought that he is stuck in the bedroom or ‘why [do] I

have to be sick.’ He would then take his cat and hang it out the window with a rope. Sometimes he would throw his cat down the stairs.” (*Id.*)

Dr. Gelernter noted Centra was a bit more relaxed then when he last saw him, but his clothes were dirty and he had poor hygiene. The doctor assessed Centra as having obsessive compulsive disorder. He gave Centra a trial of Zyprexa, and told him to take the medication for at least two weeks to assess whether he liked it or not. He continued the Zoloft, and continued the Klonopin at Centra’s request. (R. 560)

Centra’s next follow-up with Dr. Gelernter was on April 17, 1998. Centra reported doing well and sleeping better on the Zyprexa. The Klonopin continued to help reduce his panic attacks, and he reported only having one panic attack since his last appointment. He was still cleaning for several hours a day, and was playing electronic games for several hours at a time. He reported continued thoughts of killing people. The doctor noted some of Centra’s thought were bizarre, and speculated that he might suffer from schizoid or schizotypal personality disorder. He assessed Centra’s current GAF at 50-53.¹³ The doctor continued Centra’s current medications, and directed him to return in four weeks. (R. 552-53)

At Centra’s next appointment on May 18, 1998, he reported continued improvement with the Zyprexa. He stated he was less angry, calmer, and his sleep continued to be “very good.” He noted that if he failed to take his Klonopin, he would feel jittery and nervous. Frequent diarrhea had decreased to two or three times per day, which the doctor opined might be due to an increased Zoloft dosage. Dr. Gelernter noted Centra’s clothes were dirty and he was unkempt. He was “logical and direct in his speech,” although the

¹³This GAF rating is ambiguous. A GAF of 50 indicates serious symptoms or serious impairment with social and occupational functioning, while a GAF of 53 indicates moderate symptoms (*e.g.*, occasional panic attacks) or moderate difficulty in social or occupational functioning (*e.g.*, few friends, conflicts with peers or co-workers). DSM-IV, at 32.

doctor noted Centra “appeared to be unflappable despite some of the things that he said.” (R. 547) The doctor continued Centra’s current medications, and instructed him to experiment on his own with decreasing his Klonopin dosage. (R. 547-58)

Dr. Gelernter saw Centra again on June 15, 1998. Centra reported he had cut back on Klonopin as instructed, and his anxiety level had not increased. He stated he had experienced no anxiety attacks in the preceding two months. He complained of feeling tired and napping excessively during the day, and stated sometimes it was hard to awaken him. He had tried to stop cleaning but “could not do it,” and stated he had to tidy things up immediately or he would get anxious. He was instructed to continue taking Zoloft and Zyprexa, decrease the Klonopin, and return in four weeks for follow-up. (R. 544)

On June 29, 1998, Centra fell off the porch at his home, hitting his forehead and left shoulder on concrete. He was taken to the emergency room by ambulance. He denied loss of consciousness. (R. 599-601, 800-05) He returned to the hospital the next day complaining of left shoulder pain and headache. Glen O. Harden, M.D., who examined Centra, ordered a CT scan of Centra’s head to rule out a contusion. The doctor noted the “CT was unremarkable.” (R. 597) The doctor prescribed Darvocet 100, a shoulder sling, and ice packs. (R. 596-98, 797-99)

Despite Centra’s denial to the E.R. physician that he had lost consciousness, and the doctor’s report that the CT was unremarkable, Centra told Dr. Gelernter at his next appointment on July 13, 1998, that when he fell, he had “passed out” and remained unconscious for two minutes. He further stated that two CTs of his head showed a “mild concussion,” and he reported “bruising of the skull and membrane.” (R. 535) Centra stated he had a panic attack in conjunction with the fall, and he was afraid of getting a blood clot or having a stroke. He also reported two other panic attacks that occurred when he was at a restaurant with his friend Arnie. One attack began when a baby was crying,

and the other occurred when there were a lot of people talking in the restaurant. He took Klonopin on both occasions, and he had increased his Klonopin dosage. (*Id.*) Except for these incidents, Centra reported improvement in his condition, noting he was getting along with his wife, experiencing less panic attacks after increasing his Klonopin, and feeling more relaxed with the Zyprexa. (*Id.*)

Dr. Gelernter noted Centra's hygiene and appearance remained poor and his affect was somewhat flat; however, he interacted with the doctor appropriately. The doctor noted Centra continued to have "some very odd thoughts." (*Id.*) They discussed a behavioral modification plan for Centra to become more comfortable in restaurants. He was advised to set up a schedule for himself to visit restaurants daily, first with Arnie, and then alone while Arnie waited in the parking lot. When he started to feel uncomfortable, he was to wait ten seconds before leaving. The doctor continued his Zoloft and Zyprexa, and reduced his Klonopin dosage. Centra noted he was scheduled for a sleep study. (R. 536) The sleep study, which was performed on September 1, 1998, revealed moderately severe obstructive sleep apnea, and a CPAP was prescribed for Centra. (R. 742-44)

A nursing progress note on July 24, 1998, indicates Centra was referred for psychiatry case management in August 1997, but he had never contacted his case manager since that time. The note indicates the case manager reviewed the records of Centra's ongoing care in both the psychiatry and medical services, and he appeared able to manage his own appointments without a case manager. (R. 531)

Centra saw a medical doctor at the VA on August 16, 1998, and reported having an anxiety attack involving memory loss for three hours the previous evening. He stated he was anxious because he was told he would have to go to jail if he failed to pay child support. (R. 527) He went to the emergency room on September 21, 1998, complaining

of panic attacks for two days, dizziness, light-headedness, and nausea. He appeared calm at the time he arrived, and later left the hospital after signing a form indicating he was leaving against medical advice. (R. 746-47) He saw a medical doctor again on November 10, 1998, reporting that he had run out of Klonopin, and he needed it to calm himself and reduce the number of panic attacks he experienced. The doctor noted Centra “talks of many weird feelings,” but none of his ideas were psychotic. (R. 518)

Centra saw psychiatrist Richard J. Skorey, M.D. at the VA on December 17, 1998, for a progress review and medication check. The doctor noted Centra had episodes of diarrhea that were sporadic and manageable. Centra reported still hearing some voices occasionally, but none of them commanded him to do anything and he ignored them. The doctor noted Centra was “very slovenly,” but he smelled better than at his last visit. His diagnosis remained unchanged as “depressive disorder NOS, agoraphobia with panic, and also some psychotic features with his depression.” (R. 511) Centra reported doing well on his current medications, which were continued without change. He was instructed to return in three months for a brief review and medication check. (*Id.*)

Philip J. Muller, D.O. performed a psychiatric evaluation of Centra at the request of DDS on January 25, 1999. Dr. Muller noted the following from Centra’s mental status exam:

[Centra] is slightly disheveled. There is slight psychomotor retardation, no hypomania or mania. He says he has few friends, has a decreased social interaction. Generally, what he does during the day is he will wake up about 10:00, have coffee, then go back to bed, get up and watch some TV and plays with his Nintendo. He is generally able to do his own [activities of daily living]. He has a lot of problems with panic attacks. He gets very sweaty, chest pain, shortness of breath, stomach problems. He denies any anhedonia. He has problems with agoraphobia. Mental activity is regular rate.

His mood is depressed, affect restricted, no suicide or homicid[al] ideation presently. He has occasional suicidal thoughts though. He does have a history of homicidal ideation at times in the past. In fact, there was a period of time where he shot at people twice. I think they were both in 1985. He has occasional auditory hallucinations. He denies any idea as a reference, thought insertion, thought broadcasting. He has excessive sleep. His appetite is okay. He is alert and oriented x 3. He is 3 out of 3 at 0, 3 out of 3 at 5, able to spell world forwards and backwards. He is concrete. He knew Clinton, Bush, Regan [sic], Carter, and Ford. Naming is intact. He is able to follow through with a three step simple, directional request.

(R. 575-76)

Dr. Muller diagnosed Centra with panic disorder with agoraphobia, and schizotypal personality disorder. He noted Centra has “been unable to hand[le] a job, [because he] has significant problems with his physical condition as well as his mental condition. He has problems on a job where he will decompensate fairly rapidly.” (R. 576) The doctor assessed Centra’s current GAF at 42.¹⁴ (*Id.*) With regard to Centra’s work-related mental capacity, Dr. Muller reached the following conclusions:

Mr. Centra would likely not have a lot of difficulty remembering and understanding instructions, procedures, and locations except under time periods of stress; and he would likely have a significant problem with decompensation during a work-related situation. He would have difficulty carrying out instructions, maintaining attention, concentration and pace for periods of long time. His most significant difficulty would be his ability to interact appropriately with supervisors, co-workers, and the public. Again, he may have some difficulty with judgment and responding appropriately to changes in the

¹⁴ A GAF of 42 indicates serious symptoms or serious impairment with social and occupational functioning. DSM-IV, at 32.

workplace with the decompensation. He is able to do his own [activities of daily living]. He is having significant decreased social functioning, and his concentration, although, appeared to be reasonable during the evaluation, I think it is likely that during the periods of stress and decompensation, that he would have difficulty with that. He has had problems before where he has had difficulties and has actually ended up becoming homicidal at times.

As far as being able to handle his own money, he indicates that he has handled his own money in the past. At this point, he appears that he should likely be able to do that.

(Id.)

Janet S. McDonough, Ph.D., a clinical psychologist, performed a Psychiatric Review Technique of Centra on March 2, 1999. (R. 660-71) She found Centra suffers from (1) an Affective Disorder consisting of Depressive syndrome characterized by sleep disturbance, psychomotor agitation or retardation, decreased energy, feelings of guilt or worthlessness, difficulty concentrating or thinking, and thoughts of suicide (R. 663); (2) an Anxiety Related Disorder consisting of “Anxiety as the predominant disturbance or anxiety experienced in the attempt to master symptoms,” as evidenced by persistent irrational fears; “[r]ecurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror, and sense of impending doom occurring on the average of at least once a week”; and “[r]ecurrent obsessions or compulsions which are a source of marked distress” (R. 664); and (3) a personality disorder that causes “either significant impairment in social or occupational functioning or subjective distress,” evidenced by seclusiveness; “[o]ddities of thought, perception, speech and behavior”; and “[p]ersistent disturbances of mood or affect” (R. 665¹⁵). In Dr. McDonough’s opinion, these

¹⁵Note: pages 665-69 are in the second Supplemental Transcript, filed November 18, 2003.

conditions would result in a moderate functional limitation of Centra's activities of daily living, difficulties in maintaining social functioning, and deficiencies of concentration, persistence or pace. She found he had evidenced episodes of deterioration or decompensation in work or work-like settings on one or two occasions. (R. 667)

In a related Mental Residual Functional Capacity Assessment, Dr. McDonough found Centra would be moderately limited in the following work-related abilities: to carry out detailed instructions; to maintain attention and concentration for extended periods; to complete a normal workday and workweek without interruptions from psychologically based symptoms, and to perform at a consistent pace without an unreasonable number and length of rest periods; to interact appropriately with the general public; to accept instructions and respond appropriately to criticism from supervisors; to get along with coworkers or peers without distracting them or exhibiting behavioral extremes; to maintain socially appropriate behavior and adhere to basic standards of neatness and cleanliness; and to respond appropriately to changes in the work setting. She found he would not be limited significantly in the following abilities: to remember locations and work-like procedures; to understand, remember, and carry out very short and simple instructions; to understand and remember detailed instructions; to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances; to sustain an ordinary routine without special supervision; to make simple work-related decisions; to ask simple questions or request assistance; to be aware of normal hazards and take appropriate precautions; to travel in unfamiliar places or use public transportation; and to set realistic goals or make plans independently of others. (R. 669-70)

Dr. McDonough elaborated on her findings in a written supplement to the Functional Capacity Assessment. (R. 673-74) She summarized her conclusions as follows:

[T]he evidence shows that [Centra] has had regular out-patient treatment during the period of time under consideration, has been compliant with treatment, has not required hospitalization, and has had a positive response to treatment. His treating psychiatrist has generally rated his symptoms in the moderate range, although the examining psychiatrist at the [consultive examination] thought they warranted a severe rating. [Centra's] cognitive functioning remains intact, except possibly during periods of stress and decompensation. He has some eviden[ce] of habit deterioration, although that fluctuates. He has had compulsive behaviors, but also got some reduction in these with treatment. He is able to sustain some friendships, and can interact appropriately on at least a superficial basis. His panic attacks have been reduced in frequency.

Considering the duration, frequency, intensity, response to intervention and level of intervention required, and the functionally limiting effects of [Centra's] impairments and symptoms, he has severe impairments. They do not, however, cause marked functional limitations, although he does have moderate limitations in all domains. [Centra's] impairments do not meet, equal or functionally equal any mental listing. Residual functional capacity assessment is as follows:

[Centra] is able to understand and remember a variety of tasks and instructions. He would probably have some restriction in comprehension and attention if stressed in a work-like setting, but should be able to perform routine, simple tasks. He has adequate stamina for an ordinary workday or workweek. He would not require extraordinary supervision. He would not be particularly distractible in a work-like setting. He can relate appropriately under superficial conditions. He probably would have difficulty dealing with the general public, but can relate appropriately to supervisors and co-workers. He would function best in tasks that did not require on-going interaction with others. He can maintain his appearance and hygiene appropriately, although he does have some deterioration when

his mental condition is not stabilized with medication and regular treatment. He can travel independently. His judgment about ordinary hazards is unimpaired. He can manage changes in routine that do not provide much stress or require much interaction with others.

[Centra's] allegations are credible, although the degree of functional limitation is not great enough to be considered disabling. . . .

(R. 673-74)

John F. Tedesco, Ph.D., a clinical psychologist, performed a Psychiatric Review Technique on May 15, 1999. Dr. Tedesco assessed Centra as suffering from an Affective Disorder and a Personality Disorder, with identical manifestations to those listed by Dr. McDonough. He also assessed Centra as suffering from an Anxiety Related Disorder, evidenced by persistent, irrational fears, and recurrent obsessions or compulsions. (R. 684, 686) Unlike Dr. McDonough, however, Dr. Tedesco did not find Centra suffers from recurrent, severe panic attacks on average of at least once per week. (R. 685) Dr. Tedesco agreed Centra would be moderately limited in the activities of daily living, maintaining social functioning, and maintaining concentration and pace. However, he disagreed with Dr. McDonough regarding Centra's instances of decompensation, finding Centra had never had an episode of deterioration or decompensation in work or work-like settings which caused him to withdraw from the situation or to experience exacerbation of signs and symptoms. (R. 688)

Dr. Tedesco's Mental Residual Functional Capacity Assessment differed significantly from Dr. McDonough's assessment. Dr. Tedesco found Centra would be moderately limited in the following six abilities: to maintain attention and concentration for extended periods; to complete a normal workday and workweek without interruptions from psychologically based symptoms, and perform at a consistent pace without an

unreasonable number and length of rest periods; to interact appropriately with the general public; to accept instructions and respond appropriately to criticism from supervisors; to get along with coworkers or peers without distracting them or exhibiting behavioral extremes; and to respond appropriately to changes in the work setting. He found Centra would not be significantly limited in any other functional ability. (R. 690-91)

In his supplemental summary, Dr. Tedesco noted Centra has a long history of a variety of mental problems, dating back to at least 1977, with various diagnoses during that time period including depression, anxiety, adjustment disorder, personality disorder, and schizophrenia. He found Centra's statements were not always congruent with the medical records and behavioral observations. For example, Centra repeatedly told his doctors that he spent several hours cleaning each day, but he also reported that his daughter does the cleaning. He noted Centra currently complained of "disliking crowds, preferring to be isolated, and some problems with sleep/sleep apnea. He has been followed on an outpatient basis for a number of years and treated with several medications for mental symptoms. GAF scores have generally been in the moderate range, and treatment has been consistent without the need for hospitalization, etc." (R. 694) Dr. Tedesco noted Centra had reported his panic attacks had been improving, and in June of 1998, Centra reported he had not had a panic attack for the past two months. He reported having two panic attacks in restaurants in July 1998, but none after that time, and in December 1998, he reported doing well on his medication. (*Id.*)

Dr. Tedesco summarized his conclusions as follows:

Evidence is consistent in showing [Centra] with a long history of a variety of mental problems. Most of the [medical evidence of record] available, however, is devoted to physical problems. Moreover, [Centra's] symptoms have generally been stable and controlled with psychotropic medication. He does experience periods of deterioration, but they appear to be

short lived. A recent psychiatric examination suggests that [he] would have difficulty remembering and understanding instructions, procedures and locations. However, these conclusions are not consistent with the remainder of the record. Moreover, these conclusions are based on [Centra's] self report rather than objective medical evidence per se. There is no treating source opinion. Therefore, it seems reasonable to conclude that the claim is credible given [Centra's] history of psychiatric problems. However, it is credible only to the extent noted in [Dr. Tedesco's] assessment.

(Id.)

Centra was seen at the VA for follow-up of his mental condition on June 29, 1999. He reported he continued to do well on his current medications, indicating his depressive symptoms had not increased. He stated he was sleeping well and had a good appetite. He reported having occasional auditory hallucinations, about once or twice a month, during which he would hear his name being called. However, he denied any command hallucinations. (R. 997) Centra reported his panic attacks had not changed in frequency, and were occurring three to four times a week, depending on what was happening in his life. He stated that during a panic attack, he would feel sweaty, nauseous, dizzy and disoriented. He noted he is afraid to go out at night. *(Id.)*

Centra stated he was still smoking but had cut down. He reported exercising by walking and trying to do sit-ups. Notably, at this visit, the doctor noted Centra was casually dressed and clean. He smiled and cooperated appropriately throughout the interview. He expressed "tremendous pleasure taking care of his daughters," who were ages 10, 18 and 21. *(Id.)* The doctor continued Centra on his current medications, which included Zoloft, Zyprexa (Olanzapine), and Klonopin (Clonazepam). He was advised to continue exercising, decrease his smoking, and return for follow-up in three months. (R. 998)

Centra's next follow-up appointment at the VA was on September 28, 1999. Centra reported "he had been doing well until he had received some news from his primary care provider saying that he had [an] 'enlarged heart,'" which caused him to become increasingly anxious and caused an increase in his panic attacks. (R. 935) Notably, the court has been unable to locate any medical records indicating Centra has an "enlarged heart," and the doctor noted Centra's most recent EKG showed a normal sinus rhythm. (R. 936) Centra reported his panic attacks had increased from three to four times a week to daily, and he stated he would become short of breath and have chest pain, dizziness, nausea, and light-headedness. He stated that since he found out his heart was enlarged, he had increased his smoking to three packs a day. He reported sleeping well and having an adequate appetite, with a "predilection for donuts." (R. 935) The doctor noted Centra had lost weight since his last visit, and he stated he had lost two sizes. He appeared to be "modestly overweight," "casually dressed," and "somewhat disheveled." (*Id.*) The doctor discussed with Centra the health consequences from his smoking, lack of exercise, and diet. Centra declined to participate in a smoking cessation program, stating he preferred "to first cut down on the number of cigarettes that he smokes." (*Id.*) The doctor instructed Centra to remain on his current medications, decrease his smoking, watch his fat intake, continue to exercise, and return for follow-up in three months. (R. 936)

Centra was seen for follow-up of his mental condition on March 27, 2000. He continued to take Zyprexa, Zoloft, and Klonopin. Centra reported continuing problems with his temper. He described an incident where his girlfriend's 15-year-old son slammed a door on Centra's wrist, and Centra "backhanded the boy and yanked him by his hair. He state[d] that he might have killed him if the boy had not run off." (R. 1012) The doctor noted the boy apparently weighs 105 pounds, and "has behavior suggesting a conduct disorder." (*Id.*) Centra reported that his angry thoughts were not affected by the

Zyprexa. He also thought he had never had much response to the Zoloft. He reported continuing to feel depressed, sleeping excessively, and having low energy and motivation. He continued to clean obsessively for two hours a day, but he did not feel this was a problem. (R. 1012-13)

The doctor discussed the possibility of trying different medications, given that Centra had “minimal control of his depression and continue[d] to have the obsessive thoughts about harming people,” and also because he was having diarrhea an average of three times a day, which could be related to the Zoloft. However, the doctor noted Centra was also taking simvastatin to lower his cholesterol, and “Celexa, Paxil, and Prozac, all potentially interact with simvastatin,” and could lead to unwanted side effects. Centra stated he was content to continue on his current medications while the doctor researched other alternatives, and he indicated he felt “safe to go home in that he [did] not have any suicidal thoughts” or any intention to harm others. (R. 1013) The doctor noted Centra was casually dressed and groomed, and somewhat disheveled but with “fair” hygiene and no unusual odor. He was pleasant and cooperative, and had “a fairly full appropriate affect.” He denied having auditory hallucinations during the previous week, but stated he had them a week earlier. The doctor noted, “Again, he does have thoughts of harming others but he has no plan or intent and states that he feels confident he can resist these thoughts.” (*Id.*) Centra was instructed to continue his current medications until further notice, and return for follow-up in about two months. (*Id.*)

Centra’s next follow-up appointment was on November 28, 2000. Centra reported that his current medications were still working reasonably well, but he still felt depressed and continued to isolate himself. The doctor noted Centra “still has thoughts of being violent and even on the way from Sioux City to Sioux Falls today when he was driving he had thoughts of being violent toward his best friend and this seems to be strange to him,

but he says sometimes he is angry at people without reson [sic]. He thinks ‘people are cruel and generally very bad and he doesn’t want to do anything with them.’” (R. 1074) The doctor noted Centra’s hygiene was bad, he looked disheveled, and he smelled bad. The doctor increased Centra’s dosage of Risperidone and Celexa, continued the Klonopin without change, and advised Centra to lose weight and control his caloric intake. He was advised to return for follow-up in two months. (R. 1075)

Centra returned for follow-up on February 20, 2001. He reported doing well on the new drug protocol, “stating it [had] done much better than previous medication regimens that he [had] been on in the past.” (R. 1073) He had not had any side effects from his medications, and noted “much of his depression is lighter now than it has been historically.” (*Id.*) He stated his mood was somewhat down, but his panic attacks were “much less frequent,” and he felt able to do more, which he attributed to his medications. The doctor noted, “Overall, he states he is doing quite well and is pleased with his meds.” (*Id.*) Centra appeared “somewhat disheveled” and was “somewhat malodorous,” and he was wearing “a filthy coat.” (*Id.*) The doctor instructed Centra to continue his current medications, and return for follow-up in two months. (R. 1074)

At his next appointment on April 27, 2001, Centra stated he was continuing to do well on his current medications. He reported that he was “enjoying the nice weather, that his anxiety and panic attacks [were] under control and he [had no] side effects from the medication.” (R. 1072) Centra asked the doctor if she would write a letter stating he is disabled, and the doctor noted, “I definitely agreed to do that.” (*Id.*) Again, the doctor noted Centra was disheveled and smelled bad. He was instructed to continue his current medications, and return for follow-up in three months. (R. 1073)

Centra was seen for follow-up on July 19, 2001. He reported doing well since his last visit, and stated he had spent most of his time “staying home watching TV or cleaning

his home.” (R. 1066) He reported sleeping well and having an average appetite, and he denied feeling depressed, hopeless or helpless. He continued to be poorly groomed. Centra reported “intermittent lack of energy,” so the doctor reduced his Klonopin dosage. He was instructed to return for follow-up in two to three months. (*Id.*)

He continued to report doing well at his next visit on October 4, 2001. He reported the stress at home had declined, and stated he still spent most of his time at home, either cleaning or watching TV. The doctor advised Centra “to go out, at least to a coffee shop, at least once or twice a week to meet new people.” (R. 1065) The doctor noted Centra was “somewhat odorous.” Centra was advised to continue his current medications, “watch his diet to avoid more weight gain,” increase his social interactions, and return for follow-up in three months. (*Id.*)

At his next appointment on January 17, 2002, Centra reported continuing to do well on his current medications. He reported occasional anxiety attacks, “especially late in the night when he is trying to fall asleep,” but he noted the attacks were not as frequent as they had been in the past. (R. 1058) Centra asked the doctor to complete some paperwork in connection with his Social Security appeal, but the doctor declined because he had not provided Centra with prolonged care. (*Id.*) The court notes Centra saw a continuing succession of psychiatric residents at the VA, making it difficult for him to form a relationship with any particular psychiatrist. Centra expressed frustration at this fact at one of his appointments, although he indicated he understood the reality of the situation. (*See, e.g.,* R. 1073) Centra was seen for follow-up on March 22, 2002, and was told to continue his current medications and return in three months. (R. 1057)

Centra was seen for an Aid and Attendance Exam on May 20, 2002. Centra noted “his most bothersome medical condition is agoraphobia with panic attacks.” (R. 1100)

He listed his current medications as follows: “1) Clonazepam¹⁶ 0.5 mg twice daily. 2) Risperidone¹⁷ 2 mg [four times per] day. 3) Citalopram¹⁸ 40 mg per day. 4) Felodipine¹⁹ 5 mg per day. 5) Acetaminophen prn. 6) Atrovent inhaler. 7) Albuterol inhaler. 8) Atenolol²⁰ 50 mg per day. 9) Levothyroxine. 10) Salsalate²¹ prn.

¹⁶Clonazepam is the generic of the drug contained in Klonopin. The medication is an anti-convulsant. The PDR notes, “Klonopin produces CNS depression,” and therefore patients who take the drug “should be cautioned against engaging in hazardous occupations requiring mental alertness, such as operating machinery or driving a motor vehicle.” *Physicians’ Desk Reference*, 2126 (50th ed. 1996). Centra’s daily dosage of Clonazepam is in the low range. *See id.* at 2127.

¹⁷Risperidone is an antipsychotic agent with potentially serious side effects. Among other things, the PDR notes, “Since Risperdal has the potential to impair judgment, thinking, or motor skills, patients should be cautioned about operating hazardous machinery, including automobiles, until they are reasonably certain that Risperdal therapy does not affect them adversely.” *Id.* at 1302. The PDR also notes that while some patients may require up to 16 mg/day to alleviate their symptoms, doses in excess of 6 mg/day are not recommended, and are associated with a greater incidence of side effects. *Id.* at 1305.

¹⁸Citalopram hydrobromid is the generic drug found in Celexa, an antidepressant. Numerous side effects have been reported from the medication, most frequently including fatigue, impotence, insomnia, increased sweating, somnolence, and yawning. *See* www.rxlist.com, under “Celexa” (12/22/03).

¹⁹Felodipine is indicated for the treatment of hypertension. The most common side effects from the drug are peripheral edema and headaches. *See Physicians’ Desk Reference*, 528-29 (50th ed. 1996).

²⁰Atenolol is another drug used to treat hypertension. Side effects most commonly reported include dizziness, fatigue and nausea. *See id.* at 2848.

²¹Salsalate is a generic anti-steroidal anti-inflammatory agent without significant side effects absent overdose. *See id.* at 792-93.

11) Simvastatin²² 80 mg per day. 12) Famotidine²³ 20 mg per day. 13) Furosemide²⁴ 20 mg. per day.” (*Id.*)

Notes from the visit indicate Centra provided the following information about his living conditions and activities of daily living:

[Centra] states that he last worked in 1997 in construction work. He has been granted a pension. He currently lives alone in his own apartment. It is a ground floor. He does not have problems negotiating stairs. He arrived today for his appointment being driven by a friend. [He] states that he does have his own car and is able to drive but he tires easily and therefore sought to have a friend drive him to his appointment. He does not have a caregiver regularly come into his home, although he does see his daughter daily and she does provide some assistance. He does his own cooking and believes that he is able to cook safely in an independent manner. He is able to shower and shave. His daughter does do his laundry. Since he states he is physically able to do laundry, he doesn’t know how. She also does his grocery shopping and again, he states he is physically able to but she does this to provide her father assistance. [Centra] states that he would be able to exit his apartment safely on his own should there be an emergency. He denies bowel or bladder incontinence. He has had no history of stroke. He is able to ambulate independently without assistant devices. . . .

²²Simvastatin is the generic drug contained in Zocor. The drug is used, in conjunction with a diet that is restricted in saturated fat and cholesterol, to lower lipid levels in patients at risk for coronary heart disease. *See* www.rxlist.com, “Zocor” (12/22/03). Simvastatin has not been shown to produce adverse side effects in excess of those produced by placebo during trials. *Id.*

²³Famotidine is the generic drug contained in Pepcid, used to prevent and treat heartburn. *See id.*, “Pepcid” (12/22/03).

²⁴Furosemide is a diuretic indicated in the treatment of, *inter alia*, hypertension. The drug has been reported to produce numerous side effects, including diarrhea, dizziness, blurred vision, and headache. *See id.*, “Furosemide” (12/22/03).

A typical day involves [Centra] arising approximately 9 a.m. He does not eat breakfast or lunch but does have dinner between 6 and 7 p.m. in the evening. He generally goes out to eat rather than cooking at home. He spends his days and evenings sitting by his window watching activity outside. He does not watch TV or listen to the radio. His daughter stops by on a daily basis. He leaves his home to visit his daughter one time per week, although as previously stated, he generally goes out to eat dinner. He retires between 11 o'clock and 12 midnight.

(R. 1100-01) From the voluminous prior records and Centra's testimony, the examiner's notation that he "does not watch TV" is rather surprising. There is nothing in the Record to indicate whether this was simply an error, or Centra had ceased watching TV.

3. *Vocational expert's testimony*

The ALJ noted Centra attended school through the beginning of the eleventh grade. The VE testified that would be considered a limited education. The parties agreed Centra's work as a butcher was not during the preceding fifteen years and would not be considered as past relevant work. (R. 93-94) Centra's past relevant work was identified as cement finisher, construction worker II, and lumber yard worker (*see* R. 213), all of which are in the skilled to unskilled level with physical demands in the heavy to very heavy range. (R. 94)

The ALJ asked the VE the following hypothetical question, considering an individual of Centra's age, educational background and experience:

I would like you to consider jobs at the medium exertion level or less. For the first hypothetical, if the Claimant could, on occasion[,] lift or carry 50 pounds, frequently lift or carry 25 pounds. He could stand and/or walk for six hours out of an eight hour day. He could sit for six hours out of an eight hour

day. He's a smoker, so I don't want to say he can't be around smoke, but he does have the heart condition. I think he should avoid jobs where he is exposed to concentrated cold and also to concentrated fumes, dusts, gases, odors. No other physical limitations. And then from a mental standpoint, if he has a moderate limitation in his ability to maintain attention and concentration for extended periods of time, if he would best be in a job where there was limited interaction socially. I'm finding a moderate limitation in his ability to deal with the general public, to get along with coworkers or [peers] without distracting them, as well as to accept instructions and deal appropriately [with] criticism from his supervisors, and also a moderate limitation in his ability to respond appropriately to changes in the work setting. With that combination of physical and nonphysical or non-exertional [limitations], I assume he could not go back to any of his past work?

(R. 95) The VE agreed the hypothetical claimant could not return to his past work, explaining, "The work that he performed in the past would[] have been heavy and very heavy in the national economy. Similarly, in the way that he performed that work[,] it would be more strenuous than would be allowed in this hypothetical." (R. 95-96)

The VE stated the hypothetical claimant would not have any transferable skills; however, he would be able to perform unskilled, medium level jobs such as laborer, laundry worker, hand packager, or production assembler. (R. 96) The individual also could perform light level jobs such as small products assembler, bakery worker, or cannery worker. (R. 96-97) The VE opined these jobs would still be appropriate if the individual were precluded from any constant or repetitive lifting, and only occasional lifting with his left arm, although some of the medium-level jobs might be questionable. (R. 101)

The ALJ asked if the VE's responses would change if Centra's testimony were considered to be credible. The VE responded as follows:

I guess I was trying to flag some things that – in his testimony that would preclude work. And I guess I really couldn't identify any. I wasn't able to see any particular limitations in sitting or standing. He indicated that he could pick-up [sic] the recliner and spelled that out in terms of 50 pounds, walking five to six blocks. So, I guess I don't really see anything in his testimony that would preclude this kind of work. He did mention his frequent trips to the medical facilities, and that of course raises question to whether some other arrangement could be made for that.

(R. 97-98)

Centra's attorney then asked the VE to consider the fact that Centra kept his prior job because his brother-in-law accommodated Centra's semi-monthly visits to doctors. The VE stated 24 absences from work a year generally would be considered too much absenteeism, and was more than most employers would accommodate. (R. 98) In considering Centra's 17 trips to the hospital emergency room over a two-year period, the VE opined that if the absences were timed properly, an absence once every six weeks would be within tolerable limits. (R. 100) The VE explained:

Typically, an employer will accommodate as much as one absenteeism per month. That translates into approximately five percent absenteeism. When you get into a second absenteeism per month, you're getting nine plus percent absenteeism, and most employers won't tolerate that. So in terms of the mathematics of whatever it was, 17 or 19 times in a course of two years, mathematically that could work with an employer, but that's a lot of visits.

(*Id.*) However, combining the trips to doctors with the trips to the hospital, the VE noted the number of absences generally would be "beyond what is expected in the industry in this area." (R. 101)

Centra's attorney then asked if a person with a diagnosis of panic disorder and obsessive compulsive disorder, personality disorder NOS provisional, and an average GAF of 51 over a year's time, could be expected to work. The VE responded that in general, when an individual's GAF falls below 50, it is highly unlikely the individual can work in a competitive work environment. With the symptoms and GAF given, the VE stated it was "a hard call." (R. 99)

The attorney then asked the VE to amend the first hypothetical given to him by the ALJ to include a marked problem with the ability to maintain attention or concentration, to be around other people, to adjust to criticism from supervisors, and to deal with changes in the work setting. The VE stated that with four areas of marked limitation, it was doubtful the individual could complete a normal workday and follow through on tasks. (*Id.*)

Centra's attorney raised issues about the jobs the VE suggested would be appropriate. In response to his questioning, the VE agreed that a bakery worker commonly would have to work "as part of a baking team, baking operation," which would require working around other people. (R. 102) However, the VE noted the hypothetical included a person who has "moderate limits in dealing with the general public, making social adaptations, and responding to supervision, and getting along with coworkers, and changing the work setting." (*Id.*) With those limitations, the VE still opined the individual could perform the activities of a bakery worker. (*Id.*)

When asked to consider an individual's need to change position from sitting to standing about every 30 minutes, the VE noted the medium level jobs do not allow for a sit/stand option; they assume standing. Small products assembler will allow for a sit/stand option. Baker and cannery jobs "will not typically allow for a sit/stand option." (R. 104-05)

Centra's attorney then asked the VE to consider an individual who has an anxiety attack one to three times a week, at unpredictable times, that cause him to have to leave work for the remainder of the day. The VE stated the individual "might get hired," but likely would be fired for excess absenteeism. (R. 105-06)

4. The ALJ's opinion

The ALJ found Centra had not engaged in any substantial gainful activity since his alleged disability onset date of July 15, 1997. (R. 20; R. 27 ¶ 2) The ALJ found Centra has severe impairments consisting of "hypertension, hypothyroidism, asthma/bronchitis, depression, a panic/anxiety disorder, a personality disorder, and degenerative joint disease," none of which, singly or in combination, meet the Listing criteria. (R. 20-21; R. 27 ¶ 3) The ALJ also found Centra has non-severe impairments including bursitis in a knee, a resolved corneal abrasion, occasional back strain, benign prostatic hypertrophy, sleep apnea, and mild cardiomegaly, none of which cause Centra "more than minimal restrictions in ongoing work function." (R. 21)

The ALJ found Centra to have few functional limitations, including the need to avoid concentrated exposure to fumes, cold, dust, gases, and odors. (R. 27 ¶ 5) The ALJ noted Centra "is moderately limited in the ability to maintain attention and concentration for extended periods," and he "would work best in a job with limited interaction socially due to moderate limitation in the ability to interact appropriately with the general public; accept instructions and respond appropriately to criticism from supervisors; get along with coworkers or peers without distracting them or exhibiting behavioral extremes; and respond appropriately to changes in the work setting." (*Id.*)

The ALJ found Centra's subjective complaints regarding his limitations and their impact on his ability to work were not credible, noting he often exaggerated his symptoms

beyond what was supported by the medical evidence, and he was not always compliant with his doctors' advice, particularly in the areas of losing weight and quitting smoking. In addition, the ALJ opined Centra has a motive to refrain from working because his VA pension would be reduced, further impacting the credibility determination. (R. 21-24)

The ALJ boiled down all of the medical evidence regarding Centra's psychological symptoms to the following single paragraph:

Related to psychological symptoms, the undersigned carefully reviewed psychiatric visits from September 29, 1997 through September 28, 1999. In August 1997[,] [Centra] reported having panic attacks three times per week. By February 1998[,] he reported a panic attack the previous week but that he was more relaxed, feeling better, doing more, and getting out. In April he was doing "pretty good," medication had helped significantly with panic, and he was thinking about traveling with a friend. In May he reported being less angry, calmer, being "very good," and that episodes of diarrhea had decreased to two or three per day. By June 1998[,] he stated he had not had a panic attack in two months. At the next visit in July[,] he told of two panic attacks, both occurring in restaurants. He spoke directly and interacted appropriately with the examiner. The examiner noted "moderate" symptoms based on some panic attacks, a flat affect, and some odd thoughts. In December 1998[,] [Centra] reported only sporadic episodes of diarrhea, occasionally hearing voices, good memory, attention, and concentration. The examiner described him as stable and suggested a six month follow-up. In June 1999[,] [Centra] was doing well on his medication, mental status was normal, and he reported auditory hallucinations once or twice per month consisting of someone calling his name. At the most recent examination of record, in September 1999, [Centra] stated he had been doing well until he was told he had an enlarged heart. This information allegedly resulted in daily panic attacks and increased smoking to three packs per day. Longitudinal medical evidence simply

does not indicate that panic attacks or other symptoms were disabling for any continuous 12 month period.

(R. 24, citations omitted)

On the issue of Centra's mental functional capacity, the ALJ found as follows:

Related to mental function [Centra] did describe some problems with memory and concentration in the past. By early 1998[,] he reported playing math games with his daughter and playing hand-held electronics games. He described his memory as good on July 24, 1998[,] and the examiner on December 17, 1998[,] noted his memory, attention, and concentration were good. [Centra] reports having occasional difficulty with panic/anxiety in public settings but he continues to place himself [in] those settings and to maintain relationships with family and friends. Global assessment of function assigned by VA examiners has indicated moderate symptoms or less since July 13, 1998. The opinion of a consultative psychological examiner in January 1999[,] is rejected by [the ALJ] as it is based on a one-time examination which is inconsistent with longitudinal evidence and other opinion. Much more persuasive is that of State agency psychological consultants that [Centra] would have moderate limitations in a number of areas but that he could still do simple work in situations which were not too socially demanding.

(R. 25, citations omitted)

Despite the medical consultants' conclusion that Centra would be capable of medium-level work, the ALJ concluded "a limitation to light work would be more appropriate" due to the multiplicity of Centra's complaints, "his recent weight gain, and his perceptions of his own health." (*Id.*) Because the VE characterized Centra's past relevant work as heavy and very heavy (*see* R. 213), the ALJ found the "limitation to light work would preclude performance of [Centra's] past relevant work." (R. 26; *see* R. 27 ¶¶ 6 & 7) The ALJ noted Centra has an eleventh grade education, and his past relevant

work was semi-skilled and provided him with no transferable skills. In addition, the ALJ noted Centra's non-exertional limitations prevent him from performing the full range of light work. However, the ALJ found Centra retains the capacity to make an adjustment to other work that exists in significant numbers in the national economy, including small products assembler, bakery worker, and cannery worker. (R. 26; R. 28 ¶¶ 9, 10 & 12)

The ALJ therefore found Centra was not under a disability at any time through the date of his decision, and the ALJ denied Centra's applications for benefits. (R. 28 ¶ 13; R. 29)

III. DISABILITY DETERMINATIONS, THE BURDEN OF PROOF, AND THE SUBSTANTIAL EVIDENCE STANDARD

A. Disability Determinations and the Burden of Proof

Section 423(d) of the Social Security Act defines a disability as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months." 42 U.S.C. § 423(d)(1)(A); 20 C.F.R. § 404.1505. A claimant has a disability when the claimant is "not only unable to do his previous work but cannot, considering his age, education and work experience, engage in any other kind of substantial gainful work which exists . . . in significant numbers either in the region where such individual lives or in several regions of the country." 42 U.S.C. § 432(d)(2)(A).

To determine whether a claimant has a disability within the meaning of the Social Security Act, the Commissioner follows a five-step process outlined in the regulations. 20 C.F.R. §§ 404.1520 & 416.920; *see Kelley v. Callahan*, 133 F.3d 583, 587-88 (8th Cir. 1998) (citing *Ingram v. Chater*, 107 F.3d 598, 600 (8th Cir. 1997)). First, the

Commissioner must determine whether the claimant is currently engaged in substantial gainful activity. Second, he looks to see whether the claimant labors under a severe impairment; *i.e.*, “one that significantly limits the claimant’s physical or mental ability to perform basic work activities.” *Kelley*, 133 F.3d at 587-88. Third, if the claimant does have such an impairment, then the Commissioner must decide whether this impairment meets or equals one of the presumptively disabling impairments listed in the regulations. If the impairment does qualify as a presumptively disabling one, then the claimant is considered disabled, regardless of age, education, or work experience. Fourth, the Commissioner must examine whether the claimant retains the residual functional capacity to perform past relevant work.

Finally, if the claimant demonstrates the inability to perform past relevant work, then the burden shifts to the Commissioner to prove there are other jobs in the national economy that the claimant can perform, given the claimant’s impairments and vocational factors such as age, education and work experience. *Id.*; accord *Pearsall v. Massanari*, 274 F.3d 1211, 1217 (8th Cir. 2001) (“[I]f the claimant cannot perform the past work, the burden then shifts to the Commissioner to prove that there are other jobs in the national economy that the claimant can perform.”) (citing *Cox v. Apfel*, 160 F.3d 1203, 1206 (8th Cir. 1998)).

Step five requires that the Commissioner bear the burden on two particular matters:

In our circuit it is well settled law that once a claimant demonstrates that he or she is unable to do past relevant work, the burden of proof shifts to the Commissioner to prove, first that the claimant retains the residual functional capacity to do other kinds of work, and, second that other work exists in substantial numbers in the national economy that the claimant is able to do. *McCoy v. Schweiker*, 683 F.2d 1138, 1146-47 (8th Cir. 1982) (*en banc*); *O’Leary v. Schweiker*, 710 F.2d 1334, 1338 (8th Cir. 1983).

Nevland v. Apfel, 204 F.3d 853, 857 (8th Cir. 2000) (emphasis added); *accord Weiler v. Apfel*, 179 F.3d 1107, 1110 (8th Cir. 1999) (analyzing the fifth-step determination in terms of (1) whether there was sufficient medical evidence to support the ALJ’s residual functional capacity determination and (2) whether there was sufficient evidence to support the ALJ’s conclusion that there were a significant number of jobs in the economy that the claimant could perform with that residual functional capacity); *Fenton v. Apfel*, 149 F.3d 907, 910 (8th Cir. 1998) (describing “the Secretary’s two-fold burden” at step five to be, first, to prove the claimant has the residual functional capacity to do other kinds of work, and second, to demonstrate that jobs are available in the national economy that are realistically suited to the claimant’s qualifications and capabilities).

B. The Substantial Evidence Standard

Governing precedent in the Eighth Circuit requires this court to affirm the ALJ’s findings if they are supported by substantial evidence in the record as a whole. *Krogmeier v. Barnhart*, 294 F.3d 1019, 1022 (8th Cir. 2002) (citing *Prosch v. Apfel*, 201 F.3d 1010, 1012 (8th Cir. 2000)); *Weiler, supra*, 179 F.3d at 1109 (citing *Pierce v. Apfel*, 173 F.3d 704, 706 (8th Cir. 1999)); *Kelley, supra*, 133 F.3d at 587 (citing *Matthews v. Bowen*, 879 F.2d 422, 423-24 (8th Cir. 1989)); 42 U.S.C. § 405(g) (“The findings of the Commissioner of Social Security as to any fact, if supported by substantial evidence, shall be conclusive. . . .”). Under this standard, “[s]ubstantial evidence is less than a preponderance but is enough that a reasonable mind would find it adequate to support the Commissioner’s conclusion.” *Krogmeier, id.*; *Weiler, id.*; *accord Gowell v. Apfel*, 242 F.3d 793, 796 (8th Cir. 2001) (citing *Craig v. Apfel*, 212 F.3d 433, 436 (8th Cir. 2000)); *Hutton v. Apfel*, 175 F.3d 651, 654 (8th Cir. 1999); *Woolf v. Shalala*, 3 F.3d 1210, 1213 (8th Cir. 1993).

Moreover, substantial evidence “on the record as a whole” requires consideration of the record in its entirety, taking into account both “evidence that detracts from the Commissioner’s decision as well as evidence that supports it.” *Krogmeier*, 294 F.3d at 1022 (citing *Craig*, 212 F.3d at 436); *Willcuts v. Apfel*, 143 F.3d 1134, 1136 (8th Cir. 1998) (quoting *Universal Camera Corp. v. N.L.R.B.*, 340 U.S. 474, 488, 71 S. Ct. 456, 464, 95 L. Ed. 456 (1951)); *Gowell, id.*; *Hutton*, 175 F.3d at 654 (citing *Woolf*, 3 F.3d at 1213); *Kelley*, 133 F.3d at 587 (citing *Cline v. Sullivan*, 939 F.2d 560, 564 (8th Cir. 1991)).

In evaluating the evidence in an appeal of a denial of benefits, the court must apply a balancing test to assess any contradictory evidence. *Sobania v. Secretary of Health & Human Serv.*, 879 F.2d 441, 444 (8th Cir. 1989) (citing *Steadman v. S.E.C.*, 450 U.S. 91, 99, 101 S. Ct. 999, 1006, 67 L. Ed. 2d 69 (1981)). The court, however, does “not reweigh the evidence or review the factual record *de novo*.” *Roe v. Chater*, 92 F.3d 672, 675 (8th Cir. 1996) (quoting *Naber v. Shalala*, 22 F.3d 186, 188 (8th Cir. 1994)). Instead, if, after reviewing the evidence, the court finds it “possible to draw two inconsistent positions from the evidence and one of those positions represents the agency’s findings, [the court] must affirm the [Commissioner’s] decision.” *Id.* (quoting *Robinson v. Sullivan*, 956 F.2d 836, 838 (8th Cir. 1992), and citing *Cruse v. Bowen*, 867 F.2d 1183, 1184 (8th Cir. 1989)); *see Hall v. Chater*, 109 F.3d 1255, 1258 (8th Cir. 1997) (citing *Roe v. Chater*, 92 F.3d 672, 675 (8th Cir. 1996)). This is true even in cases where the court “might have weighed the evidence differently.” *Culbertson v. Shalala*, 30 F.3d 934, 939 (8th Cir. 1994) (citing *Browning v. Sullivan*, 958 F.2d 817, 822 (8th Cir. 1992)); *accord Krogmeier*, 294 F.3d at 1022 (citing *Woolf*, 3 F.3d at 1213). The court may not reverse “the Commissioner’s decision merely because of the existence of substantial evidence

supporting a different outcome.” *Spradling v. Chater*, 126 F.3d 1072, 1074 (8th Cir. 1997); *accord Pearsall*, 274 F.3d at 1217; *Gowell, supra*.

On the issue of an ALJ’s determination that a claimant’s subjective complaints lack credibility, the Sixth and Seventh Circuits have held an ALJ’s credibility determinations are entitled to considerable weight. *See, e.g., Young v. Secretary of H.H.S.*, 957 F.2d 386, 392 (7th Cir. 1992) (citing *Cheshier v. Bowen*, 831 F.2d 687, 690 (7th Cir. 1987)); *Gooch v. Secretary of H.H.S.*, 833 F.2d 589, 592 (6th Cir. 1987), *cert. denied*, 484 U.S. 1075, 108 S. Ct. 1050, 98 L. Ed. 2d. 1012 (1988); *Hardaway v. Secretary of H.H.S.*, 823 F.2d 922, 928 (6th Cir. 1987). Nonetheless, in the Eighth Circuit, an ALJ may not discredit a claimant’s subjective allegations of pain, discomfort or other disabling limitations simply because there is a lack of objective evidence; instead, the ALJ may only discredit subjective complaints if they are inconsistent with the record as a whole. *See Hinchey v. Shalala*, 29 F.3d 428, 432 (8th Cir. 1994); *see also Bishop v. Sullivan*, 900 F.2d 1259, 1262 (8th Cir. 1990) (citing *Polaski v. Heckler*, 739 F.2d 1320, 1322 (8th Cir. 1984)). As the court explained in *Polaski v. Heckler*:

The adjudicator must give full consideration to all of the evidence presented relating to subjective complaints, including the claimant’s prior work record, and observations by third parties and treating and examining physicians relating to such matters as:

- 1) the claimant’s daily activities;
- 2) the duration, frequency and intensity of the pain;
- 3) precipitating and aggravating factors;
- 4) dosage, effectiveness and side effects of medication;
- 5) functional restrictions.

Polaski, 739 F.2d 1320, 1322 (8th Cir. 1984). *Accord Ramirez v. Barnhart*, 292 F.3d 576, 580-81 (8th Cir. 2002).

IV. ANALYSIS

Preliminarily, the court notes this is a difficult case. On the one hand, the enormous Record evidences years of ongoing treatment for Centra's various medical and psychological problems. His years of relative isolation, poor personal hygiene, and lack of transferable work-related skills suggest he would be unable to obtain and hold any type of gainful employment. On the other hand, Centra has evidenced a tendency to exaggerate his symptoms and diagnoses, calling his credibility into question. He has not been hospitalized for medical or psychological problems since July 1997, and has done reasonably well on his medications since that time. As the court found previously in this opinion, Centra's medical problems, standing alone, are not disabling. The question then is whether Centra's psychological problems are disabling, either alone or in combination with his medical problems.

In his brief, Centra quotes from a Social Security Ruling that discusses in some detail the impact stress and mental illness have on the disability determination. The court finds the Ruling particularly applicable in the present case. The agency discussed the necessity for careful consideration of a claimant's residual functional capacity when mental illness is involved, noting, *inter alia*, the following:

Since mental illness is defined and characterized by maladaptive behavior, it is not unusual that the mentally impaired have difficulty accommodating to the demands of work and work-like settings. Determining whether these individuals will be able to adapt to the demands or "stress" of the workplace is often extremely difficult. . . .

Individuals with mental disorders often adopt a highly restricted and/or inflexible lifestyle within which they appear to function well. Good mental health services and care may enable chronic patients to function adequately in the community by lowering psychological pressures, by medication,

and by support from services such as outpatient facilities, day-care programs, social work programs and similar assistance.

The reaction to the demands of work (stress) is highly individualized, and mental illness is characterized by adverse responses to seemingly trivial circumstances. The mentally impaired may cease to function effectively when facing such demands as getting to work regularly, having their performance supervised, and remaining in the workplace for a full day. A person may become panicked and develop palpitations, shortness of breath, or feel faint while riding in an elevator; another may experience terror and begin to hallucinate when approached by a stranger asking a question. Thus, the mentally impaired may have difficulty meeting the requirements of even so-called “low-stress” jobs.

SSR 85-15 (PPS-119), 1983-1991 Soc. Sec. Rep. Serv. 343, 1985 WL 56857 at *6 (1985).

The stated purposes of the Ruling also are instructive here. In revising a prior Program Policy Statement, the agency sought “to emphasize, in the sections relating to mental impairments: (1) that the potential job base for mentally ill claimants without adverse vocational factors is not necessarily large even for individuals who have no other impairments, unless their remaining mental capacities are sufficient to meet the intellectual and emotional demands of at least unskilled, competitive, remunerative work on a sustained basis; and (2) that a finding of disability can be appropriate for an individual who has a severe mental impairment which does not meet or equal the Listing of Impairments, even where he or she does not have adversities in age, education, or work experience.” *Id.*, 1985 WL 56857 at *1.

In considering a claimant such as Centra, who has no physical functional limitations and whose “only impairment is mental, is not of listing severity, but does prevent [him] from meeting the mental demands of past relevant work and prevents the transferability of

acquired work skills, the final consideration is whether [he] can be expected to perform unskilled work.” *Id.* at *4. The agency explained:

The basic mental demands of competitive, remunerative, unskilled work include the abilities (on a sustained basis) to understand, carry out, and remember simple instructions; to respond appropriately to supervision, coworkers, and usual work situations; and to deal with changes in a routine work setting. A substantial loss of ability to meet any of these basic work-related activities would severely limit the potential occupational base. This, in turn, would justify a finding of disability because even favorable age, education, or work experience will not offset such a severely limited occupational base.

Id. The ALJ relied on the RFC determinations of two consulting clinical psychologists in finding Centra would be able to sustain the basic mental demands of unskilled work. The ALJ specifically rejected the opinion of the consulting psychiatrist Dr. Muller, who actually examined Centra, because in the ALJ’s view, the doctor’s opinion was “based on a one-time examination” which was “inconsistent with longitudinal evidence and other opinion.” (R. 25) The court finds the ALJ erred in discounting Dr. Muller’s opinion.

In the present case, the key factor in considering Centra’s ability to work is the requirement that he not only be able to meet the mental demands of unskilled work, but that he be able to do so “on a sustained basis.” The court finds he would not. Centra has structured his life in a way that minimizes his stress and reduces his symptoms. He therefore is an individual who is “‘much more impaired for work than [his] signs and symptoms would indicate.’” See *Hutsell v. Massanari*, 259 F.3d 707, 711 (quoting *Andler v. Chater*, 100 F.3d 1389, 1393 (8th Cir. 1996)).

The fact that Centra has experienced brief respites from his anxiety attacks does not negate a finding of disability. “Symptom-free intervals and brief remissions are generally

of uncertain duration and marked by the impending possibility of a relapse. . . . The Commissioner explicitly acknowledges in the regulations relating to mental illness that total disability is not incompatible with alternating phases of active illness.” *Andler v. Chater*, 100 F.3d 1389, 1393 (8th Cir. 1996). In the present case, the ALJ failed to consider properly the variations in Centra’s level of functioning in determining the severity of his impairments over time. *See id.* Further, the ALJ failed to consider the side effects of the substantial amounts of medication Centra takes on a daily basis. As noted previously in this opinion, several of his medications may cause drowsiness, fatigue, or dizziness, and impair judgment or motor skills.²⁵ Given the effects of his medications, and considering his ongoing symptoms on a longitudinal basis, the court finds it is highly unlikely Centra could work for any sustained period of time in the jobs suggested by the ALJ; *i.e.*, small products assembler, bakery worker, or cannery worker.

Finally, even if Centra’s mental impairments were deemed not to be disabling standing alone, the court finds his mental impairments *when coupled with* his physical impairments render Centra disabled. “[T]he fact that each impairment standing alone is not disabling does not conclude the inquiry into whether an applicant is disabled. The ALJ must consider the impairments in combination and not fragmentize them in evaluating their effects.” *Delrosa v. Sullivan*, 922 F.2d 480, 484 (8th Cir. 1991) (citing *Johnson v. Secretary of Health & Human Servs.*, 872 F.2d 810, 812 (8th Cir. 1989)). Thus, “the ALJ was obligated to consider the combined effect of [Centra’s] physical and mental impairments.” *Id.* (citing *Reinhart v. Secretary of Health & Human Servs.*, 733 F.2d 571, 573 (8th Cir. 1984); *Wroblewski v. Califano*, 609 F.2d 908, 914 (8th Cir. 1979)).

²⁵See notes 16-24, *supra*.

The reality of Centra's situation is that he has multiple medical problems that require frequent visits to doctors, and cause him daily discomfort and inconvenience. In addition, he has an anxiety disorder with agoraphobia that has caused him to isolate himself significantly from interacting with the general public. Even if he were hired, he likely would be unable "to perform the requisite physical acts day in and day out, in the sometimes competitive and stressful conditions in which real people work in the real world." *McCoy v. Schweiker*, 683 F.2d 1138, 1147 (8th Cir. 1982) (citing *Kirk v. Sec'y of Health & Human Servs.*, 667 F.2d 524, 528-29 (6th Cir. 1981)).

For these reasons, the court finds Centra is disabled, and he has been disabled since his alleged onset date of July 15, 1997.

V. CONCLUSION

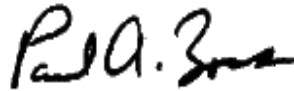
For the reasons discussed above, **IT IS RESPECTFULLY RECOMMENDED**, unless any party files objections²⁶ to the Report and Recommendation in accordance with 28 U.S.C. § 636 (b)(1)(C) and Fed. R. Civ. P. 72(b), within ten (10) days of the service of a copy of this Report and Recommendation, that the Commissioner's decision be

²⁶Objections must specify the parts of the report and recommendation to which objections are made. Objections must specify the parts of the record, including exhibits and transcript lines, which form the basis for such objections. *See* Fed. R. Civ. P. 72. Failure to file timely objections may result in waiver of the right to appeal questions of fact. *See Thomas v. Arn*, 474 U.S. 140, 155, 106 S. Ct. 466, 475, 88 L. Ed. 2d 435 (1985); *Thompson v. Nix*, 897 F.2d 356 (8th Cir. 1990).

reversed, judgment be entered for the plaintiff, and this matter be remanded for a calculation and award of benefits.²⁷

IT IS SO ORDERED.

DATED this 8th day of January, 2004.



PAUL A. ZOSS
MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT

²⁷**NOTE TO PLAINTIFF'S COUNSEL:** If final judgment is entered for the plaintiff, the plaintiff's counsel must comply with the requirements of Local Rule 54.2(b) in connection with any application for attorney fees.